IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

CRL.A.No. 1853 of 2005()

SC.108/2005 of ASSISTANT SESSIONS COURT, TIRUR

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APPELLANT: IST ACCUSED

DINESAN, S/O.KARI,
MARATH HOUSE, TRIKKANDIYOOR AMSOM,
ANNARA DESOM.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS: STATE

THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J

Crl.A.No.1853 OF 2005

Dated this the 15th day of December, 2006.

JUDGMENT

The appellant, the 1st accused, in S.C.No.108/2005 on the file of the Assistant Sessions Court, Tirur, faced trial along with the 2nd accused, the mother of the appellant, for the of offences punishable under Section 498 A read with Section 34 of the I.P.C and Section 306 of the I.P.C. The prosecution allegation against the appellant and his mother, the 2nd accused, is that the appellant and the 2nd accused used to ill-treat the wife of the appellant, deceased Sadina, and due to the willful conduct of the appellant and the 2nd accused, the said Sadina has committed suicide on 23.8.2004 and thereby committed the above offences. To prove the case against the appellant and the 2nd accused, the prosecution examined Pws 1 to 14 and relied on Exts. P1 to P10. Mos 1 and 2 were also produced. On closing the prosecution evidence, the appellant and the 2nd accused were questioned under Section 313 of the Code of Criminal Procedure. The appellant denied the prosecution allegation levelled against him. Relying on the evidence adduced by the prosecution, both oral and documentary, the trial

court found the appellant guilty under Section 498 A and he was convicted thereunder and sentenced to undergo R.I for three years and to pay a fine of Rs.5,000/=, in default of payment of fine, further term of simple imprisonment for a period of six months more. The appellant was acquitted of the charge under Section 306 of I.P.C and the 2nd accused was acquitted of all the charges levelled against her. The conviction and sentence ordered against the appellant are now assailed in this appeal.

2. This Court heard both the learned counsel appearing for the appellant and the Public Prosecutor. The learned counsel appearing for the appellant Sri. P. Chandrasekharan, has argued three points before this Court. Firstly the learned counsel submits that the trial court committed serious error in believing the prosecution witnesses to find the appellant guilty of the charges. Secondly, the learned counsel submits that the trial court ought not have believed the evidence of prosecution witnesses, who are the close relatives of deceased Sadina, and thirdly, the counsel for the appellant submits that even if the entire evidence of the prosecution witnesses is accepted, it is not reasonable to hold that the appellant had committed an

offence under Section 498 A of the I.P.C. The counsel also submits that the sentence now awarded against the appellant is excessive.

3. To prove the prosecution case against the appellant and the other accused, the prosecution relied on the evidence of Pws1, 3 & 5 and also the evidence of the investigating officers. PW1, brother of the deceased Sadina, had given the evidence before the court that marriage of his sister Sadina with the appellant was conducted on 7.5.2003 as per the custom prevalent among the community. Further PW1 had stated that after the marriage of his sister, Sadina, she was residing in the matrimonial house and she became pregnant and thereafter she was brought to the house of his uncle for delivery. Further, this witness has stated that since her parents are residing in Gundallur, himself and his sister Sadina, were residing in the house of his uncle, PW2, at Koppam. Further PW1 had given evidence before the court that after the delivery of Sadina, she was gone back to the house of the appellant at Annara and after she left the house of his uncle, he had received a phone message on the day of the incident informing that his sister was

admitted in a hospital at Tirur, and he went to the hospital and it is revealed that his sister Sadina is already dead and thereafter he had went to Tirur Police Station and given Ext.P1 F.I Statement to the Dy.S.P. According to this witness, at the time of the marriage of his sister, Sadina, gold ornaments worth about 10 soverings and an amount of Rs.15,000/= were given to the appellant as dowry and when his sister was brought for delivery, it is seen that, no ornaments were on the body of her sister. PW1 has further stated that his sister had already told that all the ornaments were taken by the appellant and he had sold it for his own purpose. When she came to the house of his uncle for delivery, she had having only her tally chain and during the period at which his sister Sadina was at the house of his uncle, the appellant came to that house and asked for her tally chain also, but that was not given by his sister. At that time his sister told him that she was being tortured by the appellant and his mother, the 2nd accused. Further, he had stated that his sister told him that she being ill treated from six to eight months of the marriage itself and she used to complain about the ill-treatment being made by the appellant and his mother to him. This witness has further stated

that the appellant used to quarrel with his sister, Sadina, frequently doubting of her chastity and also the reason that people from outside used to come to the house to watch T.V as that was disliked by the appellant. The evidence of this witness is corroborated with the evidence of PW2, who is the uncle of deceased Sadina. He had given evidence before the court that both Sadina and PW1 were residing in his house at Koppam. PW2 also had stated about the marriage of deceased Sadina with the appellant and further he had stated that Sadina had told him that the appellant was regularly quarrelling with her and the appellant was also ill-treating deceased Sadina on the reason that people from outside used to come to the house to watch T.V and he was protesting such visit by others. This witness also speaks about the ornaments which had given to Sadina at the time of marriage and the same were sold by the appellant. PW2 has further stated that even after the delivery, Sadina was reluctant to go with the appellant as she had complained of regular ill treatment being made by the appellant and his mother. Further he had stated that Sadina committed suicide only due to the ill treatment of the appellant and his mother. This witness also had stated about the phone

message received by PW1 on the date of the incident regarding admission of Sadina in the hospital. PW3 is one among the other relatives of deceased Sadina who was also residing at Koppam. This witness is none other than the sister of the mother of the deceased Sadina and she had given evidence before the court that Sadina told her several times that the appellant ill treated her on the reason of people coming from outside to watch T.V and further this witness had stated that Sadina had told her several times that the appellant used to quarrel with her some more other reasons. Further the evidence of this witness also corroborated with the evidence of Pws 1 and 2 with regard to the delivery and the incident happened when the appellant came to the house of PW2 asking for the tally chain of deceased Sadina. PW5 is another witness, who was the class mate and friend of deceased Sadina and this witness was examined to prove that whenever Sadina used to come to the house of PW2, Sadina met her and Sadina had told her that her husband, the appellant, used to harass her and ill treat her doubting the chastity of Sadina. This witness has further stated that Sadina had told her that the appellant used to quarrel with her regularly and because of that, she was not

willing to go back to the house of appellant after the delivery. Though these witnesses were cross examined by the learned counsel appearing for the appellant, their evidences with regard to the ill treatments being carried on by the appellant have not been shattered or their evidences have not been discredited. Hence the trial court fully believed these witnesses and found that there is evidence to show that the appellant wed to ill treat deceased Sadina and because of his continuous willful conduct and harassment, deceased, Sadina was drived to commit suicide. In this contest it has to be seen that though defence attempted to prove that after the delivery of Sadina she was disappointed and depressed so as to commit suicide, no evidence has been adduced but, only a general suggestion put to PW12 the Doctor who conducted postmortem on the body of deceased Sadina. But that by itself is not a reason to doubt the prosecution case proved through the evidence of witness. Hence, this Court is of the view that the trial court is fully justified in believing the evidence of prosecution witnesses and to find that the appellant had committed the offence under Section 498 A of I.P.C. The contention of the learned counsel that there is no specific evidence before the court to show that

the appellant had committed series of acts which drived Sadina to commit suicide as contemplated under Section 498 A of I.P.C. To substantiate this arguments, the learned counsel placed before this Court a judgment of the Apex Court reported in **Girdhar Shankar Tawade v State of Maharashtra** (AIR 2002 SC 2078). This Court had gone through the above judgment of the Apex Court and it is seen that the Apex Court had considered the factual situation in which the accused was charge sheeted by the police under Section 498 A and Section 306 I.P.C. There were instances of similar ill treatment on the part of the husband and in such a situation, the Apex Court held that to prove an offence under Section 498 A, series of actions involving ill treatment or willful conduct should be proved. Comparing with the evidence of the case in hand with the case dwelt by the Apex Court, this Court is of the view that the evidence of Pws 1 to 5 would show that there were series of instances of ill treatment on the part of the appellant and only because of this ill treatment and willful conducts and the attitude of the appellant, deceased Sadina was fed up and she was tried to put an end of her life. If so, the failure on the part of the prosecution witness to prove specific instances of ill

treatment and non complaining about such instances are not fatal to the prosecution case at all. It was come out in evidence that during the marriage an amount of Rs.15,000/= and ornaments worth for ten soverings were given to deceased Sadina. The evidence of Pws 1 to 3 would show that when Sadina was brought to the house of PW2 for delivery she was wearing only her tally chain. Further, it is revealed that even during that time, the appellant came to the house of PW2 asking Sadina to give the tally chain for his own use and there occurred a quarrel between the deceased Sadina and the appellant. If so, the findings of the trial court with regard to the continuous ill treatments on deceases Sadina by the appellant is on evidence.

4. Hence, this Court is of the view that the findings of the trial court with regard to the commission of the offence by the appellant do not require any interference. Further it is to be noted that the evidence of other witnesses who are the neighbours of both deceased Sadina and the appellant would show that there were frequent quarrel between the appellant and deceased Sadina. In this contest evidences of Pws 6 and 7

are also relevant though PW7 is not fully supporting the prosecution case. When PW6 cross examined by the prosecution, he had stated before the investigating officer that he used to hear the quarrel between the appellant and deceased Sadina and this was usual from the house of the appellant. PW7 though declared hostile to the prosecution had admitted that the appellant was ill treating the deceased Sadina on the ground that people from outside used to come to the house to watch T.V programmes. This witness though had not supported the statement given to the investigating officer, his evidence would also show that the married life of deceased Sadina with the appellant was not cordial or peaceful. From the evidence now adduced, this Court is not in a position to hold that the evidence given by Pws 1 to 3 and 5 cannot taken as an ordinary wear and tear of a family life which would not drive the deceased to commit suicide. But the evidence is otherwise.

5. With regard to the sentence awarded against the appellant it has to be seen that the trial court had considered this question and found that the appellant is aged below 30 and deceased Sadina committed suicide within one and half

years of her marriage and a child was also born in their wedlock. Now it is revealed that the child is with the relatives of deceased Sadina. It is revealed that the appellant had given back few of the ornaments after the death of Sadina,. Further it has to be seen that the social background of both Sadina and the appellant has also to be considered while imposing penalty on the appellant.

6. Taking into consideration all these aspects, this Court is of the view that simple imprisonment for two years and fine of Rs.2,000/= and in default of payment of fine further simple imprisonment of three months will meet the ends of justice. Accordingly, confirming the conviction entered against the appellant under Section 498 A, the sentence awarded against him is reduced to two years simple imprisonment and fine of Rs.2,000/= with default sentence of payment of fine, three months simple imprisonment more. With the above modification of the sentence, in all other respects the appeal stands dismissed. It is also revealed that the appellant is committed to prison and undergoing imprisonment from 24.8.2004 and is not released on bail.

The appellant is now completed imprisonment for more than two years and four months.

Accordingly, it is ordered that the entire period of imprisonment is limited to the period already undergone by the appellant. Consequently, the appellant/accused in S.C.No.108/2005 on the file of the Assistant Sessions Judge, Tirur, shall be released forthwith, if he is not required to be kept in jail in connection with any other case.

K. THANKAPPAN, JUDGE.

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